IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.113 OF 2007
IN
NOTICE OF MOTION NO.3589 OF 2003
IN
SUIT NO.3796 OF 2003

M/s.Meghdhaval Constructions & Ors. ...Appellants.
Vs.
Sarala @ Surekha P. Kirtikar & Ors. ...Respondents.

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Shri D.D. Madon i/b. Shri J.S. Kini for the appellants.
Shri S. C. Naidu with Shri S.I. Memon for respondent Nos.2 and 3.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

February 21, 2007.

P.C.

Heard the learned Advocate for the parties. The Appellants have challenged the impugned order dated 12th January 2007 passed in Notice of Motion No.3589 of 2003 in Suit No.3796 of 2003. By the impugned order while making the Notice of Motion absolute in terms of prayer clause (b) of the case, a Receiver has been accordingly appointed in relation to Flat Nos.201 and 202, situated on the Second Floor of the building known as “Shanti Kunj”, situated on Plot No.255, CTS No.E/472, 12th Road, Khar (West), Mumbai. Though various contentions

have been sought to be raised in the matter on the basis of the development agreement entered into between the parties, the Learned Single Judge, in the impugned order, has clearly held that the perusal of the agreement nowhere discloses any clause which could permit the appellants to be in possession of any of the constructed portions in the building, obviously including the suit flats. The said finding is clearly borne out from the record. The learned Advocate appearing for the Appellant has not been able to point out any clause in the agreement which could disclose the said finding to be contrary to the materials on record. Being so, prima facie, a clear case is made out for the appointment of a Receiver as the claim is sought to be placed to the suit flats by the Appellants and the claim is entirely based on the said agreement which prima facie does not disclose that such a claim could be sustained. In this view of the matter, therefore, we do not find any case made out for the interference in this appeal. Hence, the appeal is dismissed. Interim stay vacated.

Needless to say that there is also a suit filed by the Appellants being Suit No.1601 of 2000 seeking specific performance of the matter. It would be in the fitness of the case to

try both the suits, namely the said suit as well as the the present suit together. Ordered accordingly.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)